

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.489 of 2019**

1. Sanjay Kumar Singh Son of Shri Kailash Singh Resident of Areraj, P.O.-
Areraj, P.S.-Gobindganj, District-East Champaran
2. Vijay Kumar Singh son of Shri Kailash Singh Resident of Areraj, P.O.-
Areraj, P.S.-Gobindganj, District-East Champaran

... .. Petitioners

Versus

Shri Manager Singh Son of Late Gorakh Singh Resident of Areraj, P.O.-
Areraj, P.S.-Gobindganj, District-East Champaran.

.. ... Respondent

Appearance :

For the Petitioners : Mr.Vivek Anand Amritesh, Advocate
For the Respondent : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 01-08-2019

This application has been filed by the petitioners for quashing the order dated 23.01.2019 passed by the learned Munsif, Areraj, East Champaran in Title Suit No.3A of 2016 whereby the application filed by the petitioner on 16.07.2018 under Section 10 of the Code of Civil Procedure (for short 'CPC') for stay of the suit has been rejected.

2. Learned counsel for the petitioners submitted that the order impugned passed by the learned Munsif is arbitrary, mala fide and against the provision of law. He contended that the same has been passed without judicial application of mind in clear violation of law. According to him, the learned Munsif has totally ignored the fact that though respondent had filed eviction suit first



and then the petitioner filed partition suit before the Sub-Judge, Areraj for the same property but only after filing of the partition suit the private respondent filed petition for converting eviction suit into title suit. He contended that the court below ought to have allowed the application filed by the petitioner under Section 10 of the CPC and stayed the suit.

3. The short facts of the case are that the petitioners are cousin of the respondents. Initially, respondent had filed Eviction Suit No. 3 of 2016 impleading the petitioners as defendants. Thereafter, the petitioners filed Partition Suit No. 66 of 2016. Subsequently, eviction suit was converted into Title Suit No. 3A of 2016 whereafter the petitioners filed an application on 16.07.2018 for stay of the suit under Section 10 of the CPC, which has been rejected vide impugned order dated 23.01.2019.

4. On perusal of the order impugned, I find that earlier also, the petitioner had filed similar petition for stay of the suit which was rejected by the trial court. While passing the order impugned, the trial court has assigned two reasons for rejecting the application filed by the petitioner. The first reason is that prior to filing Partition Suit No. 66 of 2016, the respondent had filed Eviction Suit No. 3 of 2016 which was converted into Title Suit No. 3A of 2016. The second ground for rejecting the application of



the petitioner is that the relief sought in both the suits are different. Having assigned aforesaid two reasons, the learned Munsif observed that in such condition, principle of Section 10 of the CPC will not apply against the instant suit.

5. Section 10 of the CPC provides that no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

6. Admittedly, in the present case, the respondent had filed Eviction Suit No. 3 of 2016 prior to filing of Partition Suit No. 66 of 2016. The subsequent conversion of the eviction suit in Title Suit No. 3A of 2016 would make no difference as far as the date of filing of the application is concerned. In case, the matter in issue is directly and substantially not in issue in a previously instituted suit between the same parties, the court cannot grant stay of the suit under Section 10 of the CPC. Moreover, the court below also held that the issue involved in the



eviction suit and the partition suit are two different things, which cannot be taken up together.

7. Keeping in mind the above discussions, when I look to the facts and circumstances of the present case, I see no jurisdictional error in the order impugned passed by the court below. The same is neither illegal nor perverse.

8. In that view of the matter, I am not inclined to interfere with the order impugned in supervisory jurisdiction under Article 227 of the Constitution of India.

9. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.08.2019
Transmission Date	NA

